A.F.R.

(17)

HIGH COURT OF CHHATTISGARH; BILASPUR
SB; HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA
FIRST APPEAL NO. 270/2005

Appellant Defendant	:	Smt. Shobha Parakh, aged 31 years, D/o. Ketmal Ostwal, r/o. Near Ram Mandir, Kondagaon, Tah: Kondgaon, Dist. Bastar (CG).
	Vs.	
Respondent Plaintiff	:	Ajay Kumar Parakh, aged 32 years, s/o. Dhanraj Parakh, r/o. Nandai Road, Satnami Para, Rajnandgaon, Tah. and Dist. Rajnandgaon, C.G.

PRESENT:

Shri Manoj Paranjape, counsel for the appellant.

JUDGMENT

(Dated 27/01/2006)

This appeal is directed against the judgment and decree dated 19.10.2005 passed by the First Additional District Judge Rajnandgaon, Dist-Rajnandgaon in Civil Suit No.62-A/98 by which the suit for declaration of marriage dated 12.11.1997 void, filed by the respondent has been allowed and decreed.

2) Respondent filed a petition under Section 11 of the Hindu Marriage Act, 1955 (henceforth "the Act") for declaring his marriage with the appellant on 12.11.1997 null and void on the ground that when the appellant contacted marriage with him, her first marriage was subsisting. Set apart, she was suffering from mental dis-order and

(18)

concealed the same while contacting marriage with the respondent. Appellant denied the allegations leveled against her and pleaded that earlier she was married to Hemraj but before contacting marriage with the respondent, her marriage with Hemraj had been dissolved according to their customs.

3) Both the parties adduced their evidence in support of their case. Learned trial Court vide impugned judgment and decree, declared the marriage dated 12.11.1997 solemnized between the appellant and the respondent void holding that at the time of marriage the appellant has her spouse Hemraj was alive.

4) Learned counsel for the appellant contended that although they have not pleaded that appellant's marriage with Hemraj was void, but from the evidence on record it was proved that Hemraj had his spouse living when he contacted marriage with the appellant.

5) In civil matter it is incumbent on the party who prays for any relief on any specific fact, to plead the facts and thereafter to prove the same by evidence. Order XVIII of the Code of Civil Procedure clearly provides that the party on whom burden to prove any issue lies, shall adduce evidence in support of that issue. Here in the instant case, appellant has not pleaded that her marriage with Hemraj was void on the ground that at the time of marriage Hemraj has a spouse living, therefore, neither she was entitled to adduce evidence on these facts nor such evidence if tendered was admissible.

6) Set apart, from perusal of record it is evident that no evidence is there to unveil that Hemraj when married to appellant had a spouse living or was legally married with any other woman. Shobha Parakh, in her statement deposed that when she went to her marital home, she

(19)

found a woman quarrelling with Hemraj saying that why he further contacted marriage without appraising the fact that he was already married. This evidence does not lead to establish that Hemraj was legally married with that woman or with any other woman.

7) Learned counsel for the appellant further contended that as per the caste custom, appellant took divorce with Hemraj before entering into marriage with the respondent on 12.11.1997. Admittedly, appellant was married to Hemraj and he was alive when the appellant contacted marriage with the respondent on 12.11.1997.

8) Section 3(a) and Section 29(2) of the Act reads as below:

> *"3(a) :- the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family :*
> ***Provided** that the rule is certain and not unreasonable or opposed to public policy; and*
> ***Provided further** that in the case of a rule applicable only to a family it has not been discontinued by the family;"*
>
> *"29(2) :- Nothing contained in this Act shall be deemed to affect any right recognized by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act."*

9) From bare reading of these provisions, it is clear that if any party takes shelter of any right recognized by custom for dissolution

(20)

of marriage, it is necessary for him to plead and establish custom and usage in accordance with the above provisions. Here in the instant case, no custom or usage as expressed in the above provision has been pleaded or proved. Therefore, learned Court below, after meticulous appreciation of evidence, has correctly held that the appellant when entered into marriage with respondent on 12.11.1997, at that time, she had a spouse living. Learned trial Court rightly declared the marriage between the parties solemnized on 12.11.1997 null and void on the ground that the marriage has been solemnized contravening the condition mentioned in Clause (i) of Section 5 of the Act.

11) In the result, the judgment and decree passed by the trial Court does not suffer from any irregularity, infirmity or illegality which requires interference by this Court. Therefore, the appeal is liable to be dismissed and is accordingly dismissed *in limine*.

In the light of above order, IA No.3444/2005 stands disposed of.

Sd/-
V.K.Shrivastava
Judge

padma